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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,802	03/23/2004	Larry P. Sower	14789.17	2905
22913	7590	02/03/2006		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER BATSON, VICTOR D	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,802	SOWER, LARRY P.	
	Examiner	Art Unit	
	Victor Batson	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-22 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

Claims 13-20 are objected to because of the following informalities: In claim 13 line 2, it appears that "ponds pond" should be changed to "pond". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,3,7-12,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenback et al. (6,306,309) in view of Petering (5,545,326).

Ekenback et al. discloses a sludge harvester including a frame, one or more wheels 2, a pump 7 and a means for breaking up at least a portion of a sludge layer 8 & 9. Ekenback et al. however lacks specifying the flow rate of the pump. Concerning claim 3, chassis members 1 (fig. 2) are considered the sideboards. Concerning claim 12, it would have been obvious to use a tow rope or the like to pull the device through the sludge pond if it became stuck.

Petering teaches that it is known for pumps used to pump sludge, to have a flow rate of 100 gpm (col 5). This flow rate allows for controlled movement of the sludge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Ekenback et al., by using a pump having a

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flow rate of approximately 100 gpm as taught by Petering, to allow for controlled movement of the sludge.

Claims 1,2,3,6-18,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mims (4,957,622) in view of Petering (5,545,326).

Mims discloses a sludge harvester including a frame, one or more wheels 84A, 84B, 84C, 84D, a pump and a rake means 160 for breaking up at least a portion of a sludge layer. Mims, however, lacks specifying the flow rate of the pump. Concerning claim 12, Mims discloses using a tow cable (columns 3-4).

Petering teaches that it is known for pumps used to pump sludge, to have a flow rate of 100 gpm (col 5). This flow rate allows for controlled movement of the sludge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mims, by using a pump having a flow rate of approximately 100 gpm as taught by Petering, to allow for controlled movement of the sludge. Concerning the method claims, the combination renders the claimed method steps obvious since such would be a logical manner of using the combination.

Claims 19 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mims (4,957,622) in view of Petering (5,545,326) as applied to claims 1,2,3,6-18,22 above, and further in view of El-Shall (5,262,064).

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Mims discloses a device as described previously, but lacks specifying that the sludge is used as fertilizer. Mims discloses that the sludge is pumped out for disposal away from the pond.

El-Shall teaches that it is known in the art to use sludge as a fertilizer (column 8 line 13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the use of the device of Mims, by using the sludge product as a fertilizer applied onto agricultural land since El-Shall teaches that it is known to use sludge as a fertilizer.

Allowable Subject Matter

Claims 4,5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 11/18/05 have been considered but are moot in view of the new ground(s) of rejection. The examiner however notes that although applicant discusses means plus function recitations in the arguments, it does not appear that applicant is specifically invoking 35 U.S.C. 112, sixth paragraph regarding the interpretation of the means plus function recitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 31, 2006



Victor Batson
Primary Examiner
Art Unit 3671



corrections
approved
1/31/06

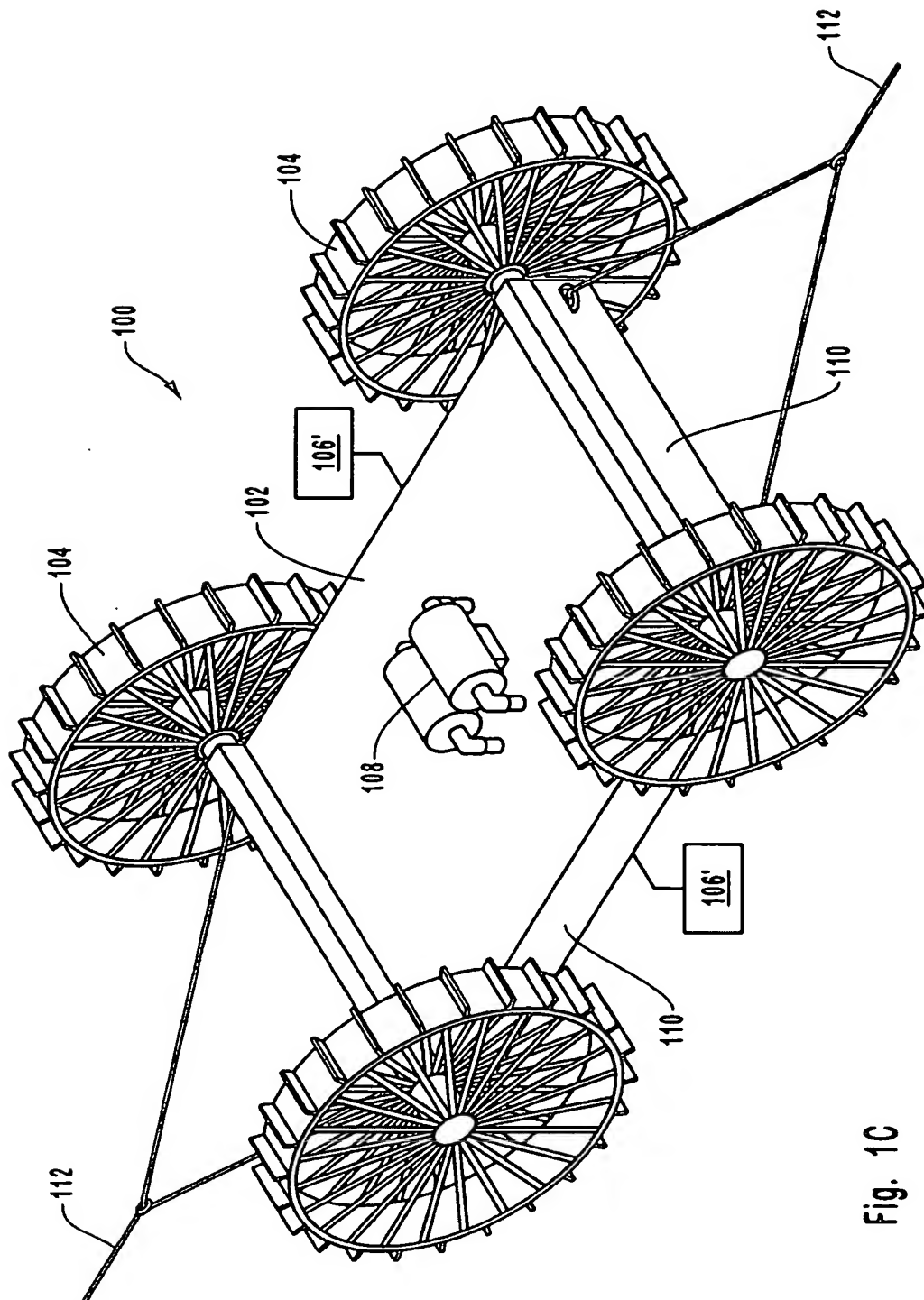


Fig. 10